

FILE COPY

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

DAVID SOMMERFELD, D.C.,
RESPONDENT.

FINAL DECISION AND ORDER.
89 CHI 33 AND 89 CHI 40

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

David Sommerfeld, D.C.
6 West St. Patrick Street
Rice Lake, WI 54868

Chiropractic Examining Board
P.O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. David Sommerfeld (D.O.B. July 9, 1956) is duly licensed in the state of Wisconsin as a chiropractor (license #1595). This license was first granted on July 17, 1980.
2. David Sommerfeld's latest address on file with the Department of Regulation and Licensing is 6 West St. Patrick Street, Rice Lake, Wisconsin 54868.
3. Commencing on or about October 3, 1988 patient JAS began receiving chiropractic treatment from David Sommerfeld, D.C., hereinafter the Respondent, for injuries he sustained in a September, 1988 automobile accident.
4. JAS remained Respondent's patient for chiropractic treatment until on or about May 28, 1989.
5. On or about March 22, 1989 Respondent diagnosed JAS as having an ovarian cyst. This diagnosis was arrived at based upon Respondent's use of applied kinesiology with no verification of such diagnosis by approved standard diagnostic procedures being made.

6. On or about April 21, 1989 Respondent diagnosed JAS as suffering from arsenic toxicity and prescribed selenium as a means to reduce the level of arsenic toxicity. This diagnosis was arrived at based upon Respondent's use of applied kinesiology with no verification of such diagnosis by approved standard diagnostic procedures being made.

CONCLUSIONS OF LAW

1. By the conduct described above, Respondent is subject to disciplinary action against his license to practice as a chiropractor in the state of Wisconsin, pursuant to Wis. Stats. sec. 446.03, and Wis. Adm. Code Chapter CHIR 6

2. Respondent's conduct on March 22, 1989 in diagnosing an ovarian cyst by use of applied kinesiology without verification of such diagnosis by approved standard diagnostic procedures constituted unprofessional conduct, i.e., practicing in a manner which substantially departs from the standard of care ordinarily exercised by a chiropractor in violation of CHIR 6.02(3), Wisconsin Administrative Code and failing to conduct a competent assessment, evaluation or diagnosis as a basis for treatment or consultation in violation of CHIR 6.02(9), Wisconsin Administrative Code.

3. Respondent's conduct on April 21, 1989, in diagnosing arsenic toxicity by use of applied kinesiology without verification of such diagnosis by approved standard diagnostic procedures and his prescription of selenium to reduce the level of arsenic toxicity constituted unprofessional conduct, i.e., practicing in a manner which substantially departs from the standard of care ordinarily exercised by a chiropractor in violation of CHIR 6.02(3), Wisconsin Administrative Code and failing to conduct a competent assessment, evaluation or diagnosis as a basis for treatment or consultation in violation of CHIR 6.02(9), Wisconsin Administrative Code.

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached stipulation is accepted.

2. Respondent David Sommerfeld, D.C., license #1595 be, and hereby is, reprimanded.

3. That the Respondent must pass courses of instruction in diagnosis with lab work (12 credit hours) and nutrition (12 credit hours), the courses to be approved by the Board prior to attendance, and submit proof of completion to the Board within twelve (12) months of the date of this order. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board.

4. That in the event Respondent David Sommerfeld fails to comply with the above education requirements within twelve (12) months of the date of this order, and/or fails to verify the same to the Department of Regulation and Licensing within thirteen (13) months of the date of this order, then his license #1595 shall be indefinitely suspended until he has complied with the terms of this order.

5. That partial costs of this action are assessed against the Respondent and payable to the Department of Regulation and Licensing in the amount of \$375.00. The costs must be paid within 30 days of the date of this order.

6. It is further ordered that the Chiropractic Examining Board shall close investigative files 89 CHI 33 and 89 CHI 40.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

This Order shall become effective ten (10) days following the date of its signing.

CHIROPRACTIC EXAMINING BOARD

By: 

A Member of the Board

Date 12-3-92

GMS:lmf

ATY-2254

STATE OF WISCONSIN
BEFORE THE CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
DAVID SOMMERFELD, D.C.,	:	89 CHI 33 AND 89 CHI 40
RESPONDENT	:	

It is hereby stipulated between David Sommerfeld, personally on his own behalf and Gerald M. Scanlan, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows that:

1. This Stipulation is entered into as a result of a pending investigation of David Sommerfeld's licensure by the Division of Enforcement. David Sommerfeld consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. David Sommerfeld understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. David Sommerfeld is aware of his right to seek legal representation and has obtained legal advice prior to signing this stipulation.

4. David Sommerfeld agrees to the adoption of the attached Final Decision and Order by the Chiropractic Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this stipulation agree that the attorney for the Division of Enforcement and the member of the Chiropractic Examining Board assigned as an advisor in this investigation may appear before the Chiropractic Examining Board for the purposes of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on the stipulation.

7. The Division of Enforcement joins David Sommerfeld in recommending the Chiropractic Examining Board adopt this Stipulation and issue the attached Final Decision and Order.

David Sommerfeld D.C.
David Sommerfeld, D.C., Respondent

11/15/92
Date

Steven C. Zach
Steven C. Zach, Attorney for Respondent

11/23/92
Date

Gerald M. Scanlan
Gerald M. Scanlan, Attorney
Division of Enforcement

11/25/92
Date

GMS:lmf
ATY-2253

NOTICE OF APPEAL INFORMATION

**(Notice of Rights for Rehearing or Judicial Review,
the times allowed for each, and the identification
of the party to be named as respondent)**

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Chiropractic Examining Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Chiropractic Examining Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Chiropractic Examining Board.

The date of mailing of this decision is December 7, 1992.